

the claimant is already receiving a disability annuity, the Board will stop paying the annuity.

(c) *Acceptable reasons for failure to follow prescribed treatment.* The following are examples of a good reason for not following treatment:

(1) The specific medical treatment is contrary to the established teaching and tenets of the claimant's religion.

(2) The prescribed treatment would be cataract surgery for one eye, when there is an impairment of the other eye resulting in a severe loss of vision and is not subject to improvement through surgery.

(3) Surgery was previously performed with unsuccessful results and the same surgery is again being recommended for the same impairment.

(4) The treatment because of its magnitude (e.g., open heart surgery), unusual nature (e.g., organ transplant), or other reason is very risky for the claimant.

(5) The treatment involves amputation of an extremity, or a major part of an extremity.

### Subpart J—Residual Functional Capacity

#### § 220.120 The claimant's residual functional capacity.

(a) *General.* The claimant's impairment(s), and any related symptoms, such as pain, may cause physical and mental limitations that affect what the claimant can do in a work setting. The claimant's residual functional capacity is what the claimant can still do despite the claimant's limitations. If the claimant has more than one impairment, the Board will consider all of the claimant's impairment(s) of which the Board is aware. The Board will consider the claimant's ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions, as described in paragraphs (b), (c), and (d) of this section. Residual functional capacity is an assessment based upon all of the relevant evidence. It may include descriptions (even the claimant's own) of limitations that go beyond the symptoms, such as pain, that are important in the diagnosis and treatment of the claimant's medical condition.

Observations by the claimant's treating or examining physicians or psychologists, the claimant's family, neighbors, friends, or other persons, of the claimant's limitations, in addition to those observations usually made during formal medical examinations, may also be used. These descriptions and observations, when used, must be considered along with the claimant's medical records to enable us to decide to what extent the claimant's impairment(s) keeps the claimant from performing particular work activities. This assessment of the claimant's remaining capacity for work is not a decision on whether the claimant is disabled, but is used as the basis for determining the particular types of work the claimant may be able to do despite the claimant's impairment(s). Then, using the guidelines in §§ 220.125 and 220.134 of this part the claimant's vocational background is considered along with the claimant's residual functional capacity in arriving at a disability determination or decision. In deciding whether the claimant's disability continues or ends, the residual functional capacity assessment may also be used to determine whether any medical improvement the claimant has experienced is related to the claimant's ability to work as discussed in § 220.178 of this part.

(b) *Physical abilities.* When the Board assesses the claimant's physical abilities, the Board first assesses the nature and extent of the claimant's physical limitations and then determines the claimant's residual functional capacity for work activity on a regular and continuing basis. A limited ability to perform certain physical demands of work activity, such as sitting, standing, walking, lifting, carrying, pushing, pulling, or other physical functions (including manipulative or postural functions, such as reaching, handling, stooping or crouching), may reduce the claimant's ability to do past work and other work.

(c) *Mental abilities.* When the Board assesses the claimant's mental abilities, the Board first assesses the nature and extent of the claimant's mental limitations and restrictions and then determines the claimant's residual functional capacity for work activity

on a regular and continuing basis. A limited ability to carry out certain mental activities, such as limitations in understanding, remembering, and carrying out instructions, and in responding appropriately to supervision, co-workers, and work pressures in a work setting, may reduce the claimant's ability to do past work and other work.

(d) *Other abilities affected by impairment(s).* Some medically determinable impairment(s), such as skin impairment(s), epilepsy, impairment(s) of vision, hearing or other senses, and impairment(s) which impose environmental restrictions, may cause limitations and restrictions which affect other work-related abilities. If the claimant has this type of impairment(s), the Board considers any resulting limitations and restrictions which may reduce the claimant's ability to do past work and other work in deciding the claimant's residual functional capacity.

(e) *Total limiting effects.* When the claimant has a severe impairment(s), but the claimant's symptoms, signs, and laboratory findings are not medically disabling, the Board will consider the limiting effects of all of the claimant's impairment(s), even those that are not severe, in determining the claimant's residual functional capacity. Pain or other symptoms may cause a limitation of function beyond that which can be determined on the basis of the anatomical, physiological or psychological abnormalities considered alone; e.g., someone with a low back disorder may be fully capable of the physical demands consistent with those of sustained medium work activity, but another person with the same disorder, because of pain, may not be capable of more than the physical demands consistent with those of light work activity on a sustained basis. In assessing the total limiting effects of the claimant's impairment(s) and any related symptoms, the Board will consider all of the medical and non-medical evidence, including the information described in § 220.114 of this part.

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**§ 220.121 Responsibility for assessing and determining residual functional capacity.**

(a) For cases at the initial or reconsideration level, the responsibility for determining residual functional capacity rests with the bureau of retirement claims. This assessment is based on all the evidence the Board has, including any statements regarding what the claimant can still do that have been provided by treating or examining physicians, consultative physicians, or any other physician designated by the Board. In any case where there is evidence which indicates the existence of a mental impairment, the bureau of retirement claims will not make a residual functional capacity determination without making every reasonable effort to ensure that a qualified psychiatrist or psychologist has provided a medical review of the case.

(b) For cases at the hearing level or the three-member-Board review level, the responsibility for deciding residual functional capacity rests with the hearings officer or the three-member Board, respectively.

**Subpart K—Vocational Considerations**

**§ 220.125 When vocational background is considered.**

(a) *General.* The Board will consider vocational factors when the claimant is applying for—

(1) An employee annuity based on disability for any regular employment; (See § 220.45(b))

(2) Widow(er) disability annuity; or

(3) Child's disability annuity based on disability before age 22.

(b) *Disability determinations in which vocational factors must be considered along with medical evidence.* When the Board cannot decide whether the claimant is disabled on medical evidence alone, the Board must use other evidence.

(1) The Board will use information from the claimant about his or her age, education, and work experience.

(2) The Board will consider the doctors' reports, and hospital records, as well as the claimant's own statements and other evidence to determine a claimant's residual functional capacity